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10/827,417

04/20/2004

Michael E. Bell

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08/07/2007

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EXAMINER

JUSKA, CHERYL

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

08/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/827,417 | Applicant(s) BELL, MICHAEL E. | |
| | Examiner Cheryl Juska | Art Unit 1771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15,17-19,21-24 and 28-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15,17-19,21-24 and 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's RCE filed July 18, 2007, has been entered. Accordingly, the amendment originally submitted as an Amendment After Final on June 14, 2007 has now been entered. Claims 15, 24, and 28 have been amended as requested. Claims 1-14, 16, 20, 25-27, and 32 have been cancelled. Thus, the pending claims are 15, 17-19, 21-24, and 28-31.

Terminal Disclaimer

3. As noted in the Advisory Action of June 27, 2007, the terminal disclaimer filed with the Amendment After Final on June 14, 2007, is sufficient to withdraw the double patenting rejection set forth in section 7 of the last Office Action (Final Rejection mailed 12/14/06).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15, 17-19, 21-24, and 28-31 rejected under 35 U.S.C. 103(a) as being unpatentable over JP 60-206868 issued to Moryama in view of WO 99/40250 issued to Chen as set forth in sections 9 and 10 of the last Office Action.

Applicant has amended independent claims 15, 24, and 28 to limit the step of “heating the first material to a temperature enabling the first material to flow, but not completely melted.” However, said amendment is insufficient to overcome the standing prior art rejection. Specifically, Moryama teaches this new limitation in that the temperature of the melt extruding process is a temperature less than the melting point of the carpet material 2 (i.e., carpet fibers of waste carpet material including pile fibers 2b and fibers of base fabric 2a), but above the melting point of the backing material 3 from the waste carpet material and the added resin (Moryama translation, page 5, lines 17-31 and Figure 1). This produces a new carpet backing comprising unmelted carpet fibers 2 in a matrix of resin comprising the melted backing material and melted added resin (Figure 5). Therefore, Moryama clearly teaches the step of heating the first material (ground chips of waste carpeting) to a temperature enabling the first material to flow, but not completely melted (i.e., carpet fibers are not melted). Additionally, it is noted that an inorganic filler, such as the calcium carbonate taught by Chen, present in the backing material, would not

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be melted at the disclosed extrusion temperature. Thus, claims 24 and 28-31 stand rejected as being obvious over the cited Moryama and Chen references.

With respect to claim 15, applicant has also amended the claim to limit the viscosity of the molten composite material to a range of 10,000-30,000 CPS. While the cited prior art fails to teach the claimed viscosity, the claims remain obvious over the prior art. In particular, the structural and chemical limitations of the claimed molten composite material are met by the cited prior art. As such, it is reasonable to presume that the present material has the same physical properties prior art material. Like materials cannot have mutually exclusive properties. In the alternative, it would have been readily obvious to one of ordinary skill in the art to manipulate the molten composition in order to achieve the desired viscosity for extruding said composition into a carpet backing, so long as the temperature criteria of Moryama is maintained. Therefore, claims 15, 17-19, and 21-23 are also rejected.

Response to Arguments

6. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

7. Applicant traverses the rejection of the claims over Moryama in view of Chen by asserting that Moryama requires the material to be completely melted, as opposed to the presently claimed invention (Amendment, paragraph spanning pages 6-7). However, as discussed above, Moryama does not require the carpet fibers of the waste carpet material to be melted. Hence, applicant's argument is found unpersuasive and the above rejection stands.

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8. Applicant also traverses the rejection by asserting that neither Moryama nor Chen teach or appreciate the claimed particle size range (Amendment, page 7, 1st paragraph). In response, applicant is reminded that Chen teaches grinding waste carpet to a particle size ranging from 5-1000 microns (Chen, page 18, claim 9). Thus, applicant's argument is found unpersuasive.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner, Art Unit 1771

cj
August 7, 2007